IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4335 OF 2006

Sirdar Carbonic Gas Co. Ltd. ..Petitioners

Vs.

Shri Ravindra D. Shelar and ors. ..Respondents

WITH

WRIT PETITION NO. 4431 OF 2006

Sirdar Carbonic Gas Co. Ltd. ..Petitioners

Vs.

Babaji Narayan Devrukhtar and ors. ..Respondents

Mr. F.E. Devitre with Mr. Shyam Mehta with Mr. Naushad Engineer i/by M/s. Fedral Rashmikant for petitioners.

Mr. R.S. Pai i/by M/s. Sanjay Udeshi and Co. for respondents in both the petitions.

CORAM: B.H. MARLAPALLE, J.

Date : August 29, 2006.

P.C.:

1. Heard the learned counsel for the respective parties.

2. Rule. Respondents waive service. Petitions

are taken up for final hearing forthwith.

3. These petitions arise from a common order dated 26/10/2005 passed by the learned Member of the Industrial Court at Mumbai rejecting the applications at Exh.CA-6 in Complaint (ULP) Nos.95 and 109 of 2003.

4. It appears that the present petitioner no.1 is the successor of M/s. ECK Haubold and Laxmi Ltd. which had a factory located in the Hindustan Mill Compound, Dr. Anandrao Nair Road, Near Jacob Circle, Mumbai - 400 011 and the manufacturing activities in the said factory had come to standstill from February 1998. The old company merged with the petitioner no.1 as per the approval granted by this court on 26/4/2001 in Company Petition Nos.247/01 and 248/01. The predecessor-company which was running the said factory issued a notice of closure on 6/1/2003 and consequently all the 16 workmen working thereunder were retrenched by paying all their legal dues. This notice of closure has been challenged in Complaint (ULP) No.95 of 2003 filed by 11 workmen and Complaint

(ULP) No.109 of 2003 filed by 5 workmen. The respondents impleaded in the said complaints are the predecessors of the petitioner no.1 and the petitioner no.2. In the said complaints applications for interim relief at Exh.U-2 came to be filed. By a common order dated 24/6/2003 the applications filed in both the complaints came to be partly allowed by directing the respondents to follow the undertaking given at Exh.C-3 and not to dispose of the land and building of the factory situated in Hindustan Mill Compound, Mumbai - 400 011 till the final disposal of the complaints. It is thus clear that the order was based on the undertaking furnished by the respondents and to the effect that during the pendency of the complaints the land and building of the factory would not be disposed off.

5. After this order below Exh.U-2 was passed, the petitioner no.2 obtained a sanction from B.I.F.R. on 1/4/2004 for development of its land and the development rights have been awarded to M/s. K. Raheja and Company who proposed to bring up multistorey towers of stilt plus 16 floors on the plot

bearing CTS No.1905 (part). The development plan has been sanctioned by the Mumbai Municipal Corporation on 23/9/2004 and as per the said sanctioned plan, the factory which has been closed down, is touching the set back and, therefore, unless the set back is cleared it would not be possible for the developers to proceed further and obtain the further approvals from the Municipal Corporation. It was under these circumstances that a fresh application at Exh.CA-6 came to be filed by the original respondent nos.1 and 2 for modification of the earlier order dated 24/6/2003. On behalf of the respondent no.2, which came to be renamed as M/s.Capricon Realty Ltd., an affidavit was filed by the Director and authorised signatory on 29/3/2005, inter alia, giving the following undertaking:-

> "Therefore, M/s. Capricon Realty Ltd. has proposed to Respondent No.1 that it will construct the premises equivalent to the existing built up area behind the existing premises at its cost to enable Respondent No.1 to shift their present premises to a new

premises in the same compound facing the road. The Respondent No.1 agree to the proposal of Respondent No.2 if equivalent area is provided as alternate premises in the same compound and the same is constructed and offered along with the demolition of existing structure and subject to the permission of this Honourable Court."

. The applications were opposed by the complainants and after hearing all the concerned parties, the impugned order came to be passed, rejecting the said applications for modification of the order.

6. It is pertinent to note that in the closed factory there were not more than 20 workers in any case. The learned Member of the Industrial Court in the order dated 24/6/2003 noted that while the closure was effected an amount of Rs.29,71,204/- was disbursed by the employer towards the payment of legal dues on account of the termination of services of the workmen. Two issues were framed in the order dated 24/6/2003

and answered as under:-

(a) Whether the complainants have made out a prima facie case for grant of interim reliefs prayed in Para 3(a) to (d) of Ex.U-2 of Complaint (ULP) No.95/03?

(b) Whether the complainants are prima facie entitled to interim relief as per Clause (e) & (f) of para 3 of Ex.U-2 in Complaint ULP No.95/03?

The first issue was answered as no and second issue answered as yes.

7. Similar, issues were framed in respect of Complaint (ULP) No.109/03 as well and after a detail reasoning on issue no.1, at no point the learned Member of the Industrial Court recorded a prima facie finding that the closure suffered from some illegalities or some amount of legal dues was still payable to the retrenched workmen. The relief granted

by answering issue no.2 is solely based on the premises that to protect the interest of the complainants, the respondents were required to be directed not to dispose off the land and building of the factory situated in the Hindustan Mill Compound and if such an order was not passed the whole purpose of filing the complaint would be frustrated.

8. Needless to mention, a company having multiple activities, on its action of closing down one of the establishments, does not close down its operations in their entirety and the company business will continue. The subject establishment which has been closed by the notice dated 6/1/2003 does not lead to a conclusion by any stretch of imagination that the company itself is closed down and if the closure is held to be illegal, the workmen will be either entitled for payment of legal dues, including their salary or in the alternative they may be directed to be absorbed in some other establishment.

9. The application at Exh.CA-6 was filed on specific contentions that after the order dated

24/6/2003 was passed, the circumstances changed drastically so far as the activities of respondent no.2 in the complaint were concerned i.e. the present petitioner no.2 and if the appropriate competent forums/authorities have permitted it to proceed further and develop the land, such rights cannot be scuttled on the ground that a complaint of unfair labour practice is presently pending against the petitioner no.1. In addition, the learned Member of the Industrial Court in the impugned order has not referred to the undertaking furnished in the application at Exh.CA-6 or in the affidavit in support thereof and as has been reproduced hereinabove. The petitioner no.2 has clearly undertaken before the Industrial Court that an equivalent area of the factory sheds would be reconstructed after the existing sheds are demolished and at the cost of the petitioner no.2 so that the activities which were closed down could be shifted in the new structures if the complaint succeeds. The learned Senior Counsel for the petitioners stated before this court that the construction of the new sheds would start immediately on demolition of the existing structures and

construction will be completed within a fixed period of about six months to one year.

10. The learned counsel for the complainants has, on the other hand, referred to the judgment in Complaint (ULP) No.530 of 1993 and the subsequent order of this court dismissing the challenge to the same judgment. As per the complainants this order dated 29/1/1999 in Complaint (ULP) No.530 of 1993 has created a right in their favour for being transferred to Ambernath factory by the petitioner no.1 and while closing down the factory in the Hindustan Mill Compound, it was necessary for the petitioner no.1 or its predecessor to transfer the complainants to the Ambernath factory. The portion of the order which purportedly supports these contentions reads as under:-

> "...The respondents are hereby directed to withdraw the transfer orders issued to the complainants and may issue the legal orders of transfers to the complainants transferring

from Calender Bowl Department to Ambernath Factory, after taking due consents of the complainants..."

. The Calender Bowl Department refers to the factory located in the Hindustan Mill Compound and which has been closed down by the notice dated 6/1/2003 and it was the liberty granted to the employer to transfer the complainants to the Ambernath factory if such a need arose in future but after taking due consents of the complainants. It is wrong to suggest that this was a right created in favour of the complainants and it would be appropriate to say that it was a liberty granted to the employer and, therefore, this order of the Industrial Court in no way defeats the application at Exh.CA-6 filed by the original respondents. As noted earlier, the impugned order first of all does not refer to the undertaking furnished, which was a sufficient protection to ensure that the demolished factory area would be reconstructed next to it or in fact one shed would be at the very same place but slightly inside so as to be away from the set back line as demarcated in the

approved plan by the Mumbai Municipal Corporation. The old structure area admeasures about 12,950 sq.ft. and the sketch which was annexed to the undertaking in terms of the affidavit also indicated that the proposed show-room and workshop area is also 12,950 sq.ft. and that too within the same premises of the Hindustan Mill Compound. This undertaking safeguards the interests of the complainants even if it is presumed for the time being that the complainants may succeed in the pending complaint and the Industrial Court may direct to reopen the factory.

11. Hence, these petitions succeed and the impugned order in both the complaints is hereby quashed and set aside. The applications filed at Exh.CA-6 in Complaint (ULP) No.95/03 and Complaint (ULP) No.109/03 are hereby allowed on the basis of the undertaking furnished and which has been reproduced as above and it is directed that the new factory shed will be reconstructed and made ready within a period of six months to one year from 1st September, 2006.

12. Rule is made absolute accordingly with no

order as to costs

(B.H. Marlapalle,J.)